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ER 9116

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**Enrollment and Review Change to LB 155**

3       The following changes, required to be reported for publication  
4 in the Journal, have been made:

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1. In the Quandahl amendment, AM3363:

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a. Section 4 has been struck and the following new section  
7 inserted:

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"Sec. 4. Section 44-19,116, Revised Statutes Supplement,  
9 2003, is amended to read:

10       44-19,116. (1)(a) A title insurance agent may operate as an  
11 escrow, security, settlement, or closing agent subject to the  
12 requirements of subdivisions (b) through ~~(e)~~ (f) of this  
13 subsection.

14       (b) All funds deposited with the title insurance agent in  
15 connection with an escrow, settlement, closing, or security deposit  
16 shall be submitted for collection to or deposited in a separate  
17 fiduciary trust account or accounts in a qualified financial  
18 institution no later than the close of the next business day in  
19 accordance with the following requirements:

20       (i) The funds shall be the property of the person or persons  
21 entitled to them under the provisions of the escrow, settlement,  
22 security deposit, or closing agreement and shall be segregated for  
23 each depository by escrow, settlement, security deposit, or closing  
24 in the records of the title insurance agent in a manner that  
25 permits the funds to be identified on an individual basis; and

26       (ii) The funds shall be applied only in accordance with the  
27 terms of the individual instructions or agreements under which the  
28 funds were accepted.

29       (c) Funds held in an escrow account shall be disbursed only  
30 pursuant to a written instruction or agreement specifying how and  
31 to whom such funds may be disbursed.

32       (d) Funds held in a security deposit account shall be  
33 disbursed only pursuant to a written agreement specifying:

34       (i) What actions the indemnitor shall take to satisfy his or  
35 her obligation under the agreement;

36       (ii) The duties of the title insurance agent with respect to  
37 disposition of the funds held, including a requirement to maintain  
38 evidence of the disposition of the title exception before any  
39 balance may be paid over to the depositing party or his or her  
40 designee; and

41       (iii) Any other provisions the director may require.

42       (e) (i) Disbursements may be made out of an escrow, settlement,  
43 or closing account only if funds in an amount at least equal to the  
44 disbursement have first been received and if the funds received are  
45 in one of the following forms:

46       (A) Lawful money of the United States;

47       (B) Wired funds when unconditionally held by the title  
48 insurance agent;

1 (C) Cashier's checks, certified checks, bank money orders, or  
 2 teller's checks issued by a federally insured financial institution  
 3 and unconditionally held by the title insurance agent; and

4 (D) United States treasury checks, federal reserve bank  
 5 checks, federal home loan bank checks, State of Nebraska warrants,  
 6 and warrants of a city of the metropolitan or primary class.

7 (ii) For purposes of this subdivision, federally insured  
 8 financial institution means an institution in which monetary  
 9 deposits are insured by the Federal Deposit Insurance Corporation  
 10 or National Credit Union Administration.

11 (f) A title insurance agent who holds funds relating to an  
 12 exchange under section 1031 of the Internal Revenue Code shall  
 13 provide written disclosure, at or before closing, to the person  
 14 whose funds are being held, on a separate paper with no other  
 15 information on the paper, which states that:

16 (i) Such services performed by a title insurance agent are not  
 17 regulated by the Department of Banking and Finance, the Department  
 18 of Insurance, or any other agency of the State of Nebraska or by  
 19 any agency of the United States Government;

20 (ii) The safety and security of such funds is not guaranteed  
 21 by any agency of the State of Nebraska or of the United States  
 22 Government or otherwise protected by law; and

23 (iii) The owner of such funds should satisfy himself or  
 24 herself as to the safety and security of such funds.

25 (2) ~~On and after January 1, 2004, every title insurance agent~~  
 26 ~~shall have an annual audit made of its escrow, settlement, closing,~~  
 27 ~~and security deposit accounts, conducted by a certified public~~  
 28 ~~accountant on a calendar year basis at its expense within ninety~~  
 29 ~~days after the close of the previous calendar year. The title~~  
 30 ~~insurance agent shall provide a copy of the audit report to each~~  
 31 ~~title insurer which it represents. The director may adopt and~~  
 32 ~~promulgate rules and regulations setting forth the minimum~~  
 33 ~~threshold level at which an audit would be required, the standards~~  
 34 ~~of audit, and the form of audit report required. The director may~~  
 35 ~~also require a title insurance agent to provide a copy of its audit~~  
 36 ~~report to the director. Title insurance agents who are attorneys~~  
 37 ~~and who issue title insurance policies as part of their legal~~  
 38 ~~representation of clients are exempt from the requirements of this~~  
 39 ~~subsection. However, the title insurer may, at its expense,~~  
 40 ~~conduct or cause to be conducted an annual audit of the escrow,~~  
 41 ~~settlement, closing, and security deposit accounts of the attorney.~~  
 42 ~~Attorneys who are exclusively in the business of title insurance~~  
 43 ~~are not exempt from the requirements of this subsection.~~

44 ~~(3)~~ If the title insurance agent is appointed by two or more  
 45 title insurers and maintains fiduciary trust accounts in connection  
 46 with providing escrow, closing, or settlement services, the title  
 47 insurance agent shall allow each title insurer ~~reasonable~~ access to  
 48 the accounts and any or all of the supporting account information  
 49 in order to ascertain the safety and security of the funds held by  
 50 the title insurance agent.

51 ~~(4)~~ (3) Nothing in the Title Insurance Agent Act shall be

1 deemed to prohibit the recording of documents prior to the time  
2 funds are available for disbursement with respect to a transaction  
3 if all parties consent to the transaction in writing.

4 ~~(5)~~ (4) Nothing in this section is intended to amend, alter,  
5 or supersede other sections of the act or the laws of this state or  
6 the United States regarding an escrow holder's duties and  
7 obligations.

8 ~~(6)~~ (5) The director may prescribe a standard agreement for  
9 escrow, settlement, closing, or security deposit funds."; and

10 b. On page 11, lines 7 and 8, "and sections 44-1984 and  
11 44-19,116" has been struck and "section 44-1984" inserted; and in  
12 line 8 "and section 44-19,116, Revised Statutes Supplement, 2003,"  
13 has been inserted after the last comma.

14 2. On page 1, the matter beginning with "section" in line 1  
15 through line 4 has been struck and "sections 44-1993, 44-19,106,  
16 and 76-238, Reissue Revised Statutes of Nebraska, section 44-1984,  
17 Revised Statutes Supplement, 2002, and section 44-19,116, Revised  
18 Statutes Supplement, 2003; to change provisions relating to  
19 coverage issued by title insurers; to provide liability for title  
20 insurers; to require disclosures by title insurance agents; to  
21 eliminate audit requirements; to provide for enforcement of the  
22 Title Insurance Agent Act; to change and eliminate provisions  
23 relating to agricultural leases, mortgages, deeds, and other  
24 instruments affecting real estate; to repeal the original sections;  
25 and to outright repeal sections 76-261 to 76-263 and 76-265,  
26 Reissue Revised Statutes of Nebraska." inserted.

27 (Signed) Ray Mossey, Chairperson